

DISTRICT OF COLUMBIA RENTAL HOUSING COMMISSION

RH-TP-06-28,854

In re: 6600 Luzon Avenue, N.W.

Ward Four (4)

BORGER MANAGEMENT, INC.
Housing Provider/Appellant

v.

ROSA LEE
WINCHESTER-LUZON TENANTS ASSOCIATION
Tenants/Appellees

**ORDER ON MOTION TO STAY APPEAL PENDING DISPOSITION OF A
MOTION TO VACATE FINAL ORDER**

March 7, 2008

YOUNG, CHAIRMAN. This case is on appeal to the Rental Housing Commission from a decision and order issued by the Office of Administrative Hearings (OAH), based on a petition filed in the Rental Accommodations and Conversion Division (RACD). The applicable provisions of the Rental Housing Act of 1985 (Act), D.C. Law 6-10, D.C. OFFICIAL CODE §§ 42-3501.01-3509.07 (2001), the District of Columbia Administrative Procedure Act (DCAPA), D.C. OFFICIAL CODE §§ 2-501-510 (2001), and the District of Columbia Municipal Regulations (DCMR), 14 DCMR §§ 3800-4399 (2004), govern the proceedings.

I. THE PROCEDURES

On December 5, 2006, the tenant, Rosa L. Lee filed Tenant Petition (TP) 28,854 with RACD, alleging that the housing provider, Borger Management, Inc., permanently eliminated services and/or facilities provided in connection with the rental of her unit.

Administrative Law Judge Claudia Barber, Office of Administrative Hearings (OAH), issued the final decision and order on January 22, 2008. On February 5, 2008, the housing provider, Borger Management, Inc., filed a Notice of Appeal in the Commission. On February 12, 2008, the housing provider filed a motion to vacate the final order with OAH. On February 22, 2008, the housing provider filed the instant Motion to Stay Appeal Pending Disposition of a Motion to Vacate Final Order (Motion) in the Commission. The motion states, in part:

Using authority of the D.C. Court of Appeals as its guide, Borger hereby requests that the RHC stay this appeal until the ALJ who issued the decision below rules on the motion. In Carter v. The Cathedral Avenue Cooperative, 532 A.2d 681 (D.C. 1987), the Court ruled that, under these circumstances, the trial court should consider the motion and, if it indicates it is inclined to grant it, the appellant may move to have the case remanded to the trial court.

II. THE ISSUE

Whether to grant the housing provider's motion for stay.

III. THE LAW

A. Notice of Appeal/Motion for Reconsideration

For appeals, the Commission's rules state:

A notice of appeal shall be filed by the aggrieved party within ten (10) days after a final decision of the Rent Administrator is issued; and if the decision is served by mail an additional three (3) days shall be allowed.

14 DCMR § 3802.2 (2004).

The filing of a notice of appeal removes jurisdiction over the matter from the Rent Administrator; Provided that if both a timely motion for reconsideration and a timely notice of appeal are filed with respect to the same decision, the Rent Administrator shall retain jurisdiction over the matter solely for the purpose of deciding the motion for reconsideration, and the Commission's jurisdiction with respect to the notice of appeal shall take effect at the end of the ten (10) day period provided by §4014.

14 DCMR § 3802.3 (2004). The rules of the Office of Administrative Hearings provide:

Any party served with a final order may file a motion for reconsideration within ten (10) days of service of that decision.

1 DCMR § 2937. 1.

A motion for reconsideration shall be decided by the Administrative Law Judge within thirty (30) days of its filing.

1 DCMR § 2937.4.

If a timely motion for reconsideration of a final order is filed, the time to appeal shall not begin to run until the motion is decided, or denied by operation of law.

1 DCMR § 2937.6.

In this case, the time period to appeal commenced on January 22, 2008, which was the date the OAH final order was issued and served by mail. The thirteen days, for appeal and service of the decision by mail, provided in rules, 14 DCMR §§ 3802.2-.3 (2004), ended on February 8, 2008. The housing provider timely filed its notice of appeal on February 5, 2008. The record does not reflect that a Motion for Reconsideration was filed with OAH on or before February 8, 2008. The motion to vacate was filed by the housing provider after the time period for filing a Motion for Reconsideration. Time limits for filing Notices of Appeals and Motions for Reconsideration are mandatory and jurisdictional. United States v. Robinson, 361 U.S. 209 (1960); Hija Lee Yu v. Dist. of Columbia Rental Hous. Comm'n, 505 A.2d 1310 (D.C. 1986); Totz v. Dist. of Columbia Rental Hous. Comm'n, 474 A.2d 827 (D.C. 1974). Accordingly, jurisdiction over the instant appeal was removed from the ALJ and the Office of Administrative Hearings when the housing provider failed to file a Motion for Reconsideration on or before February 8, 2008.

B. The Commission's Rules on Stay

The Commission's rule on stays, 14 DCMR § 3805.3 (2004), requires the Commission to consider four factors, when adjudicating a motion for stay. They are: 1) the likelihood of eventual success of the moving party; 2) the likelihood of irreparable injury to either party; 3) the balancing of injury as between the moving party and the other party(ies); and 4) the effect of a stay on the public interest.

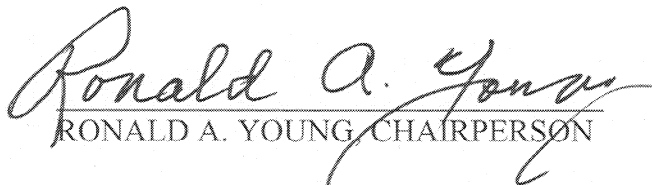
In the instant case, the housing provider failed to address any of the factors which the Commission is required to consider when adjudicating a motion for stay. While the Commission considered the Court's holding in Carter, supra, the Commission is required to follow its regulations and to provide a reasonable interpretation of those regulations.

See Tenants of 738 Longfellow Street, N.W. v. District of Columbia Rental Hous. Comm'n., 575 A.2d 1205 (D.C. 1990). Accordingly, the motion is denied.

IV. CONCLUSION

The housing provider's Motion to Stay Appeal Pending Disposition of a Motion to Vacate Final Order is DENIED.

SO ORDERED

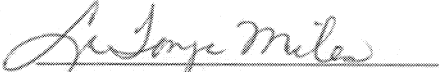

RONALD A. YOUNG, CHAIRPERSON

CERTIFICATE OF SERVICE

I certify that a copy of the **ORDER ON MOTION TO STAY APPEAL PENDING DISPOSITION OF A MOTION TO VACATE FINAL ORDER** was served by priority mail, with delivery confirmation, postage prepaid, this 7th day of March, 2008, to:

Roger Luchs, Esquire
1620 L Street, N.W.
Suite 900
Washington, D.C. 20036-5605

Rosa L. Lee
6600 Luzon Avenue, N.W.
Unit 305
Washington, D.C. 20012

A handwritten signature in cursive script, reading "LaTonya Miles", is written over a horizontal line.

LaTonya Miles
Contact Representative
(202) 442-8949